IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.379 OF 1998

R.P.Gandhi .. Petitioner

Versus

M/s.Sushant Capital Ltd. .. Respondent

Mr.S.A.Bhalawal with Ms.Richa Singh i/b. Vyas & Bhalwal for petitioner

None for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th January 2007.

P.C.

. Mr.Bhalwal appearing for petitioner submits that it was pointed out to this Court

while the petition was placed for admission that repeated attempts to serve statutory notice containing demand raised by petitioners, were made but the respondent did not accept the same. Thereafter, even notice of admission of the petition was attempted to be served at the registered office but that attempt did not yield any positive results. Therefore, this Court permitted, at the stage of admission itself, petition to be advertised. It was accordingly advertised in two newspapers. Thereafter, when the petition was placed for admission, none appeared for respondent. This Court admitted the petition considering the fact that the averments therein remained uncontroverted and, therefore, presumption under sections 433 and 434 of Companies Act has not been rebutted.

2. After the company petition was admitted by this Court on 18th February 1999, this Court directed that the petition be advertised in Free

Press Journal, Janmabhoomi and Government Gazette. That advertisement was duly inserted on 31st March 1999. Even Maharashtra Govt.Gazette contains necessary entry. An affidavit proving service of publication of notice is filed on 29th April 1999.

3. Mr.Bhalwal states that the claim in this company petition arises on account of loan advanced by cheque to the respondent company. He submits that the cheque has been duly encashed as pointed out in paras 6 and 7 of the petition. Thereafter, vide several demands in writing and oral, the amount was demanded. He invites my attention to a letter dated 23rd April 1997, copy of which is annexed as Annexure B. He, thereafter invites my attention to the averments in the petition about the statutory notice being sent and duly served. In paras 10 to 14 of the petition, it is pointed out that the financial position of the company is very bad and it is

commercially unsound. It has not been able to repay a loan of Rs.3 lakhs. In such circumstances, according to Mr.Bhalwal, presumption under sections 433 and 434 of Companies Act has not been rebutted. The petition is duly served but none has appeared. No affidavit in reply is filed.

4. Considering the provisions of sections 433 and 434 of the Companies Act so also the discretion conferred upon this Court thereunder, in my view, the petitioner's submission deserve to be accepted. Despite liberty being given to the respondent company to meet the allegations in the company petition and to substantiate the pleas raised in reply to the statutory notice, it has not come forward and contested the matter. There is no defence to the claim. All averments including the one pertaining to the financial position of respondent company have not been denied or controverted. In such circumstances,

petition deserves to be allowed. It is accordingly made absolute.

5. It is directed that the respondent be wound up in accordance with the provisions of Companies Act, 1956. It would be open for the O.L. to proceed and take charge of the assets of respondent company and thereafter take such steps as are permissible in law. Liquidator and all other concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)